

Memorandum

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OFFICE OF THE SECRETARY
FEDERAL MARITIME COMM

TO : Bryant L. VanBrakle

DATE: January 14, 2004

FROM : A. Paul Anderson, Commissioner

PA

SUBJECT : Meeting Regarding Comments of the National Industrial Transportation League Filed in Connection with Petition Nos. P3-03, P5-03, P7-03, P8-03, P9-03.

On January 14, 2004, I met in my office with Peter J. Gatti, Jr., Executive Vice President, The National Industrial Transportation League, and Nicholas J. DiMichael, Counsel with Thompson Hine LLP, at their request to hear their views on the issue of granting non-vessel-operating common carriers (NVOCCs) contract authority. My counsel, Lucille A. Streeter, was also present.

Mr. Gatti provided a brief history of the League and described how its membership has expanded in the past two years to include suppliers and intermediaries in all modes. He stated that ocean transportation has become more important to the League's members, and he described the League's participation in the process leading to the changes implemented in the Ocean Shipping Reform Act of 1998 (OSRA). He stated that the League has joined with the National Customs Brokers and Forwarders Association of America and the Transportation Intermediaries Association, to file additional comments containing a Statement of Common Principles Concerning a Section 16 Exemption for NVOCCs. He stated further that the industry has changed since the passage of OSRA, and that logistics companies are now operating in new ways. He argued that OSRA was written to provide the FMC with latitude to adapt its regulations to industry changes.

Mr. DiMichael stated that the threshold issue is the authority of the Commission to grant the relief sought in the petitions. He argued that the Commission's exemption power is broad and the agency needs to adapt the regulatory scheme to the competitive marketplace envisioned in OSRA. He stated that other government agencies with similar exemption powers have granted relief similar to what is sought here. Mr. Gatti stated that the League does not believe it is necessary to have new legislation to accomplish what is sought in the petitions,

as OSRA provides the FMC with the latitude to grant the relief.

Mr. DiMichael stated that today large companies are using third party logistics providers (3PLs) more than before, and they want the 3PLs to be able to enter service contracts. He stated further that the League will be submitting more information in its additional **comments** describing how 3PLs operate today. He argued that it is important that the FMC deal with the issues presented in the petitions on an industry-wide basis. He suggested that the Commission could use a two-step process to address the petitions, with the first step being a decision as to whether the agency has the authority to grant the relief sought. If this question is answered affirmatively, the second step could be the institution of a rulemaking to develop standards for granting contract authority. Mr. DiMichael stressed that the FMC's interpretation of OSRA should be informed by the pro-competitive policy behind the statute. Mr. Gatti stated that he hoped that the Common Principles enunciated in their recent joint comments would provide a common industry thread to guide the FMC. I concluded the meeting by thanking them and stating that agency looked forward to addressing the issues raised in the petitions.